

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARZELL WORTHEY and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

*Docket No. 00-1081; Submitted on the Record;
Issued November 28, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by approving appellant's attorney fee of \$1,897.50.

The Board has duly reviewed the case record on appeal and finds that the Office did not abuse its discretion by approving appellant's attorney fee of \$1,897.50.

By letter dated April 6, 1999, which was accompanied by an itemized statement, Max Gest, Esquire, of Los Angeles, California, appellant's representative before the Office, requested approval by the Office of a fee in the amount of \$1,897.50 for work performed from December 24, 1998 through April 5, 1999 at a billing rate of \$275.00 per hour.

In a letter dated May 30, 1999, appellant responded to an Office inquiry regarding whether appellant had approved the \$1,897.50 fee requested by Mr. Gest. Appellant responded and argued that, because the Office had committed various errors in her case, she needed to retain legal counsel; therefore, the Office should be responsible for Mr. Gest's fee. In further correspondence to the Office, appellant acknowledged that Mr. Gest was the official attorney of record and should be paid the additional fee requested, but indicated that she could not afford to make the payment.

By decision dated December 6, 1999, which included findings of facts, the Office approved the fee in the amount of \$1,897.50. The Office noted that pursuant to 5 U.S.C. § 8127 and 20 C.F.R. § 10.145 a claimant was legally liable for only those fees for service that had been approved by the Office. In the findings of fact, the Office noted that appellant had not contested the reasonableness of the amount of the fee.

On appeal appellant protests the application for attorneys' fees by Mr. Gest in the amount of \$1,897.50, and further argues that the Office failed to issue a schedule award for the right upper extremity for which she is entitled.¹

The criteria governing approval of fees for representation and disputed requests of fees are set forth in 20 C.F.R. § 10.703. In dispute cases, the Office will consider the following factors when determining whether the amount of the fee is substantially in excess of the value of services received:

“Usefulness of the representative’s services;

The nature and complexity of the claim;

The actual time spent on development and presentation of the claim;

Customary local charges for similar services.”

The record shows that in approving the \$1,897.50 fee, the Office took into consideration the criteria set forth in 20 C.F.R. § 10.703 pertaining to fees for representative’s services, including the usefulness of the services to appellant, the nature and complexity of the claim, the actual time spent on the claim and the customary local charges for similar services, along with statement’s made by appellant regarding the fees.

Appellant contends that it is the Office’s obligation to pay her attorney’s fees due to its gross error in her case. However, there is no provision in the Federal Employees’ Compensation Act² or its implementing regulations³ for payment of a claimant’s attorney fees. Section 10.702 of the implementing regulations provides that “[T]he claimant is solely responsible for paying the fee and other charges. The claimant will not be reimbursed by the Office, nor is the Office in any way liable for the amount of the fee.”⁴ In addition, the Board notes that although appellant argues that the retention of legal services was necessary due to errors made by the Office in her

¹ The Board notes that on March 3, 1995 appellant sustained injuries in the performance of duty, which resulted in a right hand contusion, lumbar strain, right inguinal strain, right knee strain and right knee arthroscopy. Following acceptance of the claim, the Office issued appellant a schedule award for 12 percent of the right lower extremity. On April 27, 1999 the Office issued an amended schedule award for an additional 29 percent permanent impairment of the right lower extremity for a total award of 41 percent. On May 22 and October 19, 1999 appellant requested an oral hearing contending that the Office should have also issued a schedule award for the right upper extremity. The Office notified appellant that since the Office had not issued a decision regarding entitlement to a schedule award for the right upper extremity, this issue could not be addressed in a hearing. On November 1, 1999 an Office hearing representative advised appellant that her case file would be returned to the district Office for further action, as necessary and issuance of a final decision regarding entitlement to a schedule award for the right upper extremity. According to the record, this issue is still under development with the Office. Therefore this issue is not before the Board on appeal, as the final decisions of the Office within the Board’s jurisdiction do not determine entitlement of a schedule award for the right upper extremity.

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.1 *et seq.*; 20 C.F.R. § 501.1 *et seq.*

⁴ 20 C.F.R. § 10.702.

case, the record contains statement from appellant, which indicated that Mr. Gest's listed services was correct and that the fee request was reasonable. Appellant has not shown that Mr. Gest did not perform the work for which the fee was charged or that Mr. Gest's representation was deficient in any manner.⁵

The decision of the Office of Workers' Compensation Programs dated December 6, 1999 is hereby affirmed.

Dated, Washington, DC
November 28, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ With appellant's request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).